

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

|                          |   |                      |
|--------------------------|---|----------------------|
| _____                    | ) |                      |
| UNITED STATES OF AMERICA | ) |                      |
|                          | ) |                      |
| v.                       | ) | Cr. No. 10-184-2 WES |
|                          | ) |                      |
| JOSE ALIBEL SANTIAGO,    | ) |                      |
|                          | ) |                      |
| Defendant.               | ) |                      |
| _____                    | ) |                      |

**ORDER**

WILLIAM E. SMITH, Chief Judge.

Defendant Jose Alibel Santiago filed a pro se Motion to Vacate under 28 U.S.C. § 2255 (ECF No. 443) on March 15, 2016. Thereafter, counsel for Santiago filed a second Motion To Vacate or Correct Sentence Pursuant to 28 U.S.C. § 2255 (18 U.S.C. § 924(c)) (ECF No. 450), based on the Supreme Court's decision in Johnson v. United States, 135 S. Ct. 2551 (2015).<sup>1</sup>

In United States v. Garcia-Ortiz, No. 16-1405, 2018 WL 4403947, at \*5 (1st Cir. Sept. 17, 2018), the First Circuit held that "the offense of Hobbs Act robbery . . . constitutes a 'crime of violence' under section 924(c)'s force clause." Accordingly, Santiago was properly sentenced under 18 U.S.C. § 924(c), and his second Motion to Vacate (ECF No. 450) based on Johnson, 135 S. Ct. 2551, is DENIED. The Court will address any

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<sup>1</sup> See also Def.'s Supp. Mem. in Supp. of Mot. to Vacate, ECF No. 466.

additional arguments set forth in Santiago's pro se filing (ECF No. 443) in a forthcoming order.

In addition, pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings in the United States District Courts, this Court hereby finds that this case is not appropriate for the issuance of a certificate of appealability because Santiago failed to make a substantial showing of the denial of a constitutional right as to any claim, as required by 28 U.S.C. § 2253(c)(2). Santiago is advised that any motion to reconsider this ruling will not extend the time to file a notice of appeal in this matter. See Rule 11(a), Rules Governing Section 2255 Proceedings.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "WESMITH", written over a horizontal line.

William E. Smith  
Chief Judge  
Date: October 4, 2018